Supreme Court U S
FILED
MAY 18 2011
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No. 10-1059

In the
Supreme Court of the United States

YANKTON SIOUX TRIBE, AND
ITS INDIVIDUAL MEMBERS,
Petitioners,

v.

UNITED STATES ARMY CORPS
OF ENGINEERS, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF OF SOUTHERN MISSOURI RECYCLING AND WASTE MANAGEMENT DISTRICT, *AMICUS CURIAE*, IN SUPPORT OF RESPONDENT, STATE OF SOUTH DAKOTA

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May 18, 2011

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae, Southern Missouri Recycling and Waste Management District, formerly known as the Southern Missouri Waste Management Association, Inc., hereinafter Southern Missouri Recycling and Waste Management District, operates a Sub-Title "D" landfill located in Charles Mix County, South Dakota Originally formed in February, 1992, its members included four counties, twenty-one municipalities and the Yankton Sioux Tribe. A site was chosen for the landfill and construction, completion and successful operation of the landfill has subsequently followed. In July 1993, after an abrupt change in the leadership of the political body of the Yankton Sioux Tribe, the Tribe withdrew from the Southern Missouri Recycling and Waste Management District and then subsequently sued Southern Missouri Recycling and Waste Management District seeking to stop construction of the landfill arguing that it was sited within the limits of the boundaries of the Yankton Sioux Reservation and additionally seeking regulatory control.

ARGUMENT

The trial court ruled in favor of the Tribe. *Yankton Sioux Tribe v Southern Missouri Waste Management Dist.*, 890 F.Supp 878 (D.S.D. 1995). On appeal, a

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[1] The parties were notified ten days prior to the due date of this brief of the intention to file Written consent of all parties accompanies this brief. No counsel for a party authored any part of this brief. No counsel or party made a monetary contribution intended to fund the preparation or submission of this brief Only the identified *amici curiae* made monetary contributions and funded the preparation and submission of this brief.

divided panel affirmed the trial court The United States Supreme Court unanimously reversed, holding that lands ceded to the federal government by the Tribe were no longer in Indian country and the Tribe's boundary had been disestablished *South Dakota v. Yankton Sioux Tribe*, 118 S.Ct. 789 (1998). The United States Supreme Court commented on the possible disestablishment of the reservation, stating. "We need not determine whether Congress disestablished the reservation altogether in order to resolve this case, and accordingly decline to do so." *Id.*, 805.

A vacating opinion was issued by the Circuit Court of Appeals for the Eighth Circuit and the case was... "remanded to the United States District Court for the District of South Dakota for further proceedings in conformity with the opinion of the Supreme Court of the United States. ." *Yankton Sioux Tribe v. Southern Missouri Waste Management District*, 141 F.3d 798 (1998). The Tribe then commenced a suit against Charles Mix County officials seeking an injunction. The District Court consolidated the two cases and issued its ruling in *Yankton Sioux Tribe v. Gaffey*, 188 F.Supp. 2d 1135, on August 14, 1998.

Since the landfill was located on "ceded" lands and thus not part of the Yankton Sioux Reservation, Southern Missouri Recycling and Waste Management District participated less actively in the case thereafter, but kept abreast of the issues and rulings.

In 2007, the district court, on remand in *Yankton Sioux Tribe v. Podhradsky*, 529 F. Supp.2d 1040 (D S.D. 2007), ruled that 37,600 acres of trust land, heretofore considered Indian country under 18 U.S.C. § 1151 (b) & (c), have reservation status. That is, that

Congress intended that the approximately two hundred individual parcels of land held in trust have a boundary around them and are to be considered as Indian country under 18 U.S.C. § 1151 (a), for now and forever.

On appeal, the Court's reasoning in *Yankton Sioux Tribe v. Podhradsky*, 577 F 3d 951 (8th Cir. S.D. 2009) and its Amended Opinion filed in *Yankton Sioux Tribe v. Podhradsky*, 606 F.3d. 985 (8th Cir. S.D. 2010) impacts Southern Missouri Recycling and Waste Management District. Many non-Indian people and entities located in Charles Mix County negatively impacted by earlier decisions found themselves, in later decisions, to be free of the reservation status conflicts. Now some fee lands may again be at risk of being within the confines of the reservation. This unresolved issue addressing non-Indian owned fee lands retaining reservation status is what most concerns petitioner Southern Missouri Recycling and Waste Management District.

In this last case, the district court determined that all land allotted to individual Indians in the 1890's which remained in allotted status, all land taken into trust under the Indian Reorganization Act, and agency land conveyed to the tribe by virtue of the Act of 1929 was "reservation" under § 1151(a). *Yankton Sioux Tribe v. Podhradsky*, 529 F.Supp.2d 1040 (D.S.D. 2007). The court of appeals affirmed the district court, except that it vacated the district court's holding that fee lands continuously held in Indian ownership were "reservation" since there was no evidence that such lands existed. *Yankton Sioux Tribe v. Podhradsky*, 577 F.3d 951 (8th Cir. 2009). In addition, the court of appeals added a new classification of Indian country,

not found by the district court or even argued by the parties. The court of appeals held that after the passage of § 1151(a), June 25, 1948, Indian allotments, Indian title to which has been extinguished, no longer left Indian country status, but retained "reservation status" under § 1151(a). The panel issued a subsequent Order stating that the language of the opinion concerning the post 1948 distinction was not in its holding and that it would excise "footnote 10 and several textual asides" to reduce any potential misunderstandings. *Yankton Sioux Tribe v. Podhradsky*, 606 F.3d 985 (8th Cir. 2010). An Amended Opinion followed incorporating those changes. *Yankton Sioux Tribe v. Podhradsky*, 606 F.3d 994 (8th Cir. 2010). The Petitions were filed in Nos. 10-929, 10-931 and 10-932 from this Amended Opinion and judgment. Southern Missouri Recycling and Waste Management District filed the Petition for Certiorari in No. 10-931.

This case, *Yankton Sioux Tribe v. United States Army Corps of Engineers* (No. 10-1059), is designated a related case. *Amici curiae* Southern Missouri Recycling and Waste Management District has not appeared previously in this case for reasons related to economy of resources and time. The issues in both cases are the same.

In order to conserve scarce resources and not unduly burden this Court with repetitious arguments, Southern Missouri Recycling and Waste Management District will not repeat arguments in the Petitions previously submitted in No. 10-929, 10-931 and 10-932. In addition, Southern Missouri Recycling and Waste Management District is aware that *amici curiae* in support of the State, County and Southern Missouri Recycling and Waste Management District Petitions in

Nos. 10-929, 10-931 and 10-932 share similar concerns. *See* interests of *amici curiae* set forth in the *Amicus Curiae* Brief of Charles Mix Electric Association, Inc. and Rosebud Electric Cooperative, Inc. in Support of Petitions for Writ of Certiorari; Brief of Cities Dante, Geddes, Lake Andes, Pickstown, Platte, Ravinia and Wagner, *Amici Curiae*, in Support of Petitions for Writ of Certiorari; *Amicus Curiae* Brief for Colin Soukup, Representing the Frank Soukup Family Limited Partnership, and Dan Cimpl in Support of Petitions for Writ of Certiorari, Brief of Randall Community Water District, *Amicus Curiae*, in Support of Petitions for Writ of Certiorari, and *Amicus Curiae* Brief of Wagner Community School District No. 11-4 in Support of Petitions for Writ of Certiorari, *Daugaard, et al. v. Yankton Sioux Tribe, et al.* (Nos. 10-929, 10-931 and 10-932).

Summarily, *amici* Charles Mix Electric Association, Inc. ("Charles Mix Electric" herein) and Rosebud Electric Cooperative, Inc., ("Rosebud Electric" herein) are both nonprofit rural electric distribution cooperatives incorporated in 1945 under South Dakota Law. Charles Mix Electric serves rural Charles Mix County. Rosebud Electric serves rural Gregory and Tripp Counties. The original (1858) Yankton Sioux Indian Reservation was located in what is now Charles Mix County, South Dakota. The original (1889) Rosebud Indian Reservation included what is now Gregory, Tripp, Lyman, Mellette and Todd Counties, South Dakota. These diminished reservations share a common history, especially with regards to treaty and statutory language, Indian allotments, ceded surplus lands, and subsequent white settlement. *See South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 118 S.Ct. 789, 139 L.Ed.2d 773 (1998) and *Rosebud Sioux Tribe*

v. Kneip, 430 U S. 584, 97 S.Ct 1361, 51 L.Ed.2d 660 (1977).

The *amici* Cities of Dante, Geddes, Lake Andes, Pickstown, Platte, Ravinia and Wagner, also submitted a brief as *amici curiae*, in support of Petitioners State of South Dakota, Charles Mix County, and Southern Missouri Waste Management District. Five of the amici Cities, Wagner, Lake Andes, Ravinia, Dante and Pickstown, are located within the 1858 boundaries of the Yankton reservation. Every one of these *amici* Cities is situated, in whole or in part, on the former allotments now held in fee, that are squarely at issue here. Two of the *amici* Cities, Geddes and Platte, lie close to the 1858 boundaries. Each of the *amici* Cities has operated, since its founding a few years after the 1894 Yankton Act, as if no reservation boundaries exist

Amici landowners submitted a brief in support of the Petitions of the State of South Dakota, Charles Mix County and Southern Missouri Recycling and Waste Management District. The representative landowners in this matter are Colin Soukup, representing the Frank Soukup Family Limited Partnership, and Dan Cimpl. The original *amici* landowners in the trial court and United States Eighth Circuit Court of Appeals were Leonard Kreeger, Colin Soukup, representing the Frank Soukup Family Limited Partnership, Mark Van Duysen and Dan Cimpl; however, two of the original *amici* landowners requested that their name be removed from this brief due to hostile actions attributable to the Bureau of Indian Affairs (BIA) and the Yankton Sioux Tribe (YST).

Amicus curiae Randall Community Water District submitted a brief in support of the Petitions of the State of South Dakota, Charles Mix County and Southern Missouri Recycling and Waste Management District. In October 1976, the Randall Community Water District was incorporated under the laws of the State of South Dakota. South Dakota Codified Laws § 46A-9 (SDCL). The stated purpose of the Randall Community Water District was to pump, treat, and distribute potable water to rural customers and rural communities in several South Dakota counties. To date, the Randall Community Water District includes all of Charles Mix County and all of Douglas County, as well as portions of Aurora County, Bon Homme County, Brule County and Hutchinson County, all in central and south eastern South Dakota.

Wagner Community School District No. 11-4, of Wagner, South Dakota, submitted a brief as *amicus curiae* in support of the Petitions for Writ of Certiorari filed by the State of South Dakota, Charles Mix County, and Southern Missouri Recycling and Waste Management District. Wagner Community School District No. 11-4 owns real property which is a part of the approximate 8,000 acres of fee property that are directly affected by the decision rendered by the Eighth Circuit Court of Appeals in *Yankton Sioux Tribe v. Podhradsky*, 577 F.3d 951 (8th Cir. Aug. 25, 2009), as amended by *Yankton Sioux Tribe v. Podhradsky*, 606 F.3d 985 (8th Cir. 2010). The Wagner School is located on part of this fee property. This fee property is within the city limits of Wagner.

CONCLUSION

Amicus curiae Southern Missouri Recycling and Waste Management District, while not agreeing this case cannot separately be resolved and affirmed, also supports the conclusion of the State of South Dakota and Charles Mix County, *amicus curiae*, to not oppose holding this Petition until disposition of the lead disestablishment petitions, to allow a full and fair presentation of the matter.

Respectfully submitted,

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